



Department of Justice

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JUSTICE DEPARTMENT FILES ANTITRUST SUIT AGAINST MICROSOFT FOR UNLAWFULLY MONOPOLIZING COMPUTER SOFTWARE MARKETS

Action Would Give Consumers More Choices 20 State Attorneys General and the District of Columbia File Similar Lawsuit

WASHINGTON, D.C. -- The Justice Department today charged Microsoft with engaging in anticompetitive and exclusionary practices designed to maintain its monopoly in personal computer operating systems and to extend that monopoly to internet browsing software. Twenty state Attorneys General and the District of Columbia filed a similar action today.

"Consumers and computer manufacturers should have the right to choose the software they want installed on their personal computers," said Attorney General Janet Reno. "We are acting to preserve competition and promote innovation in the computer software industry."

"This action will protect innovation by ensuring that anyone who develops a software program will have a fair opportunity to compete in the marketplace," said Joel I. Klein, Assistant Attorney General in charge of the Department's Antitrust Division. "Inventors and investors cannot and will not develop and market innovative software programs if they know that Microsoft can use its Windows monopoly to block the distribution of their programs and to force consumers to buy Microsoft's competing products."

In its complaint, filed today in U.S. District Court in Washington, D.C., the Department charged that Microsoft engaged in a pattern of anticompetitive acts, including the following:

- In May 1995, Microsoft executives attempted to persuade an internet browser software competitor--Netscape Communications Corporation--not to compete with Microsoft and to divide the browser market, with Microsoft becoming the sole supplier of browsers for use with Windows 95 operating systems and with Netscape becoming the sole supplier of browsers for non-Windows 95 operating systems. Netscape refused to participate.

- Microsoft unlawfully required PC manufacturers to agree to license and install its browser, Internet Explorer, as a condition of obtaining licenses for the Windows 95 operating system.

- Microsoft now intends to tie unlawfully its IE Internet browser software to its new Windows 98 operating system, the successor to Windows 95.

- Microsoft continues to misuse its Windows operating system monopoly by requiring personal computer manufacturers to agree, as a condition of acquiring a license to the Windows operating system, to adopt a uniform "boot-up" or "first screen" sequence specified by Microsoft. This sequence determines the screens that every user sees upon turning on a Windows PC. Microsoft's exclusionary restrictions forbid, among other things, any changes by an OEM that would remove from the PC Microsoft's Internet Explorer software or that would add to the PC a competing browser in any more prominent or visible way than the way Microsoft requires Internet Explorer to be presented.

- Microsoft has entered into anticompetitive agreements with virtually all of the nation's largest and most popular On-Line Service Providers and Internet Service Providers, firms which provide the communications link between a subscriber's PC and the Internet. These agreements leverage its operating system monopoly by conditioning these Providers' inclusion in Windows' lists on their agreement to offer Microsoft's Internet Explorer browser primarily or exclusively through all of the channels through which they distribute their services; not to promote or even mention to any of their subscribers the existence of a competing Internet browser; and to use on their own Internet sites Microsoft proprietary standards and tools that make those sites more effective when viewed through Internet Explorer than when viewed through competing Internet browsers. These agreements have foreclosed competing browsers from this major channel of browser distribution. More than 30 percent of Internet browser users have obtained their browsers from their service providers.

- Microsoft has entered into anticompetitive agreements with Internet Content Providers (ICPs). Prominent "channel buttons" advertising and providing direct Internet access to select ICPs appear on the "Active Desktop" feature shipped with the Windows operating system. These agreements condition an ICP's placement on one of these buttons on the ICP's agreement not to pay or otherwise compensate a Microsoft Internet browser competitor for similar placement on that browser; not to advertise or even publicly mention its placement on a competing browser; not to promote a competing browser in any other way; not to allow a competing browser to highlight and promote the ICP's Internet content; and to design its Web sites using Microsoft-specific, proprietary programming extensions so that those sites are more effective when viewed with Internet Explorer than when viewed through a competing browser.

- Although Microsoft has sought to modify some of the anticompetitive agreements with ISPs, OSPs and ICPs, the modifications Microsoft has imposed (which condition participation in Windows on the Providers agreeing to give parity to Microsoft's browser) are themselves unlawful.

The complaint also charges that Microsoft recognized that the success of Netscape's internet browser threatened Microsoft's Windows monopoly on PC operating systems. Netscape's browser presented such a threat because it was designed to run on several different operating systems and afforded software developers the opportunity to develop programs to run directly on the Netscape browser. This would leave computer manufacturers and users with a choice about which operating system to run on their PCs, leading to more competition and lower prices for operating systems.

This threat was described by Microsoft CEO Bill Gates in a 1995 warning to Microsoft executives:

"A new competitor "born" on the Internet is Netscape. Their browser is dominant, with a 70% usage share, allowing them to determine which network extensions will catch on. They are pursuing a multi-platform strategy where they move the key API [applications programming interface] into the client to commoditize the underlying operating system."

Microsoft set out to eliminate this competitive threat and to win at any cost what Microsoft described as "the browser war" between Internet Explorer and Netscape's Navigator browser, the Department said.

Reno added, "The Internet is an immensely popular medium for communication, commerce, and the information flow of the 21st century. No firm should be permitted to use its monopoly power to develop a chokehold on the browser software needed to access the Internet."

The Department is seeking preliminary relief to eliminate provisions in Microsoft's licensing and marketing contracts that restrict the ability of computer manufacturers to choose which browser to install on their machines. It also seeks to eliminate provisions that limit the

ability of Internet service, online service and internet content providers to distribute and promote competing browser software.

Klein stated that the preliminary relief being sought "will not require Microsoft to redesign Windows 98. Our main focus in the motion for preliminary injunction is not the code-- it's the contracts."

The Department today filed a motion seeking a preliminary injunction that would:

-- Require that if Microsoft insists on including its browser on Windows 98, it must also include Netscape's browser so that consumers will have a real choice. Computer manufacturers would have the option of deleting either browser. If Microsoft does not want to include Netscape, it must unbundle its own browser and let it compete on the merits.

-- Require Microsoft to give computer manufacturers the right to modify the initial bootup sequence, so that the manufacturers will be able to offer consumers greater choices in the products and services installed on their machines;

-- Require Microsoft to give computer manufacturers additional options for installing and removing browser software on new computers; and

-- Forbid Microsoft from enforcing contractual provisions that condition participation by internet and online service providers and internet content providers in the windows desktop on their agreeing to limit their distribution and promotion of competing browsers.

Microsoft's own documents, quoted in the complaint filed today, make clear that Microsoft executives did not believe that Microsoft could win the browser war through competition on the merits and instead had to use its Windows monopoly advantage to tilt the playing field in its favor, the Department said. For example:

- Microsoft's Christian Wildfeuer wrote on February 24, 1997: "It seems clear that it will be very hard to increase browser market share on the merits of IE 4 alone. *It will be more important to leverage the OS asset to make people use IE instead of Navigator*" (emphasis added);

- Microsoft Senior Vice President Allchin had similarly written on December 20, 1996, that unless Microsoft were to "leverage Windows I don't understand how IE is going to win Maybe being free helps us, but once people are used to a product it is hard to change them My conclusion is that we must leverage Windows more. Treating IE as just an add-on to Windows which is cross-platform loses our biggest advantage — Windows market share. We

should dedicate a cross group team to come up with ways to leverage Windows technically more We should think first about an integrated solution — that is our strength."

- On January 2, 1997, Allchin wrote concerning "IE and Windows" that Microsoft needed to begin "leveraging Windows from a marketing perspective" if it was to defeat Netscape. Allchin complained that without leveraging Windows from a marketing standpoint: "We do not use our strength — which is that we have an installed base of Windows and we have a strong OEM shipment channel for Windows." Allchin emphasized: "I am convinced we have to use Windows — this is the one thing they don't have We have to be competitive with features, but we need something more — Windows integration. If you agree that Windows is a huge asset, then it follows quickly that we are not investing sufficiently in finding ways to tie IE and Windows together." Using Microsoft's code name, Memphis, for the next version of Windows, Allchin concluded that, "Memphis must be a simple upgrade, but most importantly it must be a killer on OEM shipments *so that Netscape never gets a chance on these systems.*" (Emphasis supplied).

- On March 25, 1997, Microsoft's Megan Bliss wrote concerning Bill Gates Memphis Review that Microsoft's "#1 strategic imperative" was "to get IE share," that they had been "stalled," and that their "best hope is tying tight to Windows, esp. on OEM machines." She added, "That is, unless I've woken up in an alternate state and now work for Netscape."

- On March 27, 1997, Microsoft's Kumar Mehta, after analyzing "how people get and use IE" concluded that "based on all the IE research we have done . . . it is a mistake to release Memphis without bundling IE with it."

- Microsoft concluded in late March 1997 that if Windows 98 and IE "are decoupled, then Navigator has a good chance of winning" and that "if we take away IE from the O/S, most nav users will never switch to us."

- As Microsoft senior executive Brad Chase recognized in an April 21, 1997 memorandum, "Memphis is a key weapon in the IE share battle."

- As a January 5, 1997 presentation to Microsoft CEO Bill Gates had emphasized: "Integrate with Windows" was a way to "Increase IE share".

The Department filed its complaint and motion for a preliminary injunction today after discussions over the weekend with Microsoft ended without satisfying the Department's competitive concerns.

In addressing the scope of the complaint being filed today, Klein stated, "We are filing this action now to address time-sensitive aspects of the shipment of Windows 98, aspects that

could significantly harm competition. Our investigation of other Microsoft practices is ongoing."

The Department's press release, complaint, and motion for a preliminary injunction can be found at the following Internet address: <http://www.usdoj.gov/atr>
After accessing the Division's website, go to "Antitrust Cases" and look for U.S. v. Microsoft.

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98-223